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8   UNITED STATES DISTRICT COURT
                        WESTERN DISTRICT OF WASHINGTON
9   AT SEATTLE

10   UNITED STATES OF AMERICA,   CASE NO. CR08-62MJP

11   Plaintiff,   ORDER DENYING MOTION TO
                                               MODIFY SENTENCE
12   v.

13   JEVON SHANE GIPSON,

14   Defendant.

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16   This matter comes before the Court on Defendant Jevon Shane Gipson's motion to

17   modify his sentence. (Dkt. No. 46.) Having reviewed the motion, the response (Dkt. No. 48),

18   and all related papers, the Court DENIES the motion.

19   **Background**

20   On May 23, 2008, Gipson pleaded guilty to conspiracy to distribute cocaine-base in

21   violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. The plea agreement Gipson signed

22   stipulated that the offense involved 200 net grams of cocaine-base and 123 net grams of cocaine

23   HCl. (Dkt. No. 21 ¶ 9.a.) The Presentence Report determined that the Guideline range of 151 to

24   188 was proper, given the then-current sentencing guidelines of November 2007. The report

1 noted that the conviction carried a statutory mandatory minimum of 120 months. (Presentence

2 Report ¶ 76; Dkt. No. 21 ¶ 3.a.) On August 28, 2008, the Court adopted the Presentence Report

3 and sentenced Gipson to the mandatory minimum sentence of 120 months. (Dkt. No. 38 at 2)

4 Defendant did not appeal his sentence or conviction. Defendant now seeks to modify his

5 sentence citing the authority of 18 U.S.C. § 3582(c)(1)(B) and the Fair Sentencing Act of 2010.

6 **Analysis**

7 A.   Fair Sentencing Act

8   Gipson relies on the Fair Sentencing Act of 2010 to suggest that it would permit a

9 modification of his sentence. The Ninth Circuit has already ruled that the Fair Sentence Act

10 cannot be applied retroactively to modify a sentence. United States v. Baptist, 646 F.3d 1225,

11 1229 (9th Cir. 2011). The court held that the Fair Sentencing Act, passed after the Court

12 imposed Gipson's sentence, does not contain any express statement that it has retroactive

13 application. Id. Thus, the general federal savings statute forecloses its application. Id.; 1 U.S.C.

14 § 109. The Court cannot rely on the Fair Sentencing Act to modify Gipson's sentence, and

15 DENIES the motion on this issue.

16 B.   Alternative Modification Bases

17   Although Gipson's motion does not explicitly request modification on another basis, the

18 Court considers and finds inapplicable any modification under 18 U.S.C. § 3582(c)(2).

19   "A federal court generally 'may not modify a term of imprisonment once it has been

20 imposed.'" Dillon v. United States, 130 S. Ct. 2683, 2687 (2010) (quoting 18 U.S.C. § 3582(c)).

21 The Court may, however, lower a sentence, where the "'sentencing range has subsequently been

22 lowered by the Sentencing Commission'" and "'if such a reduction is consistent with' applicable

23 Commission policy statements." Id. (quoting 18 U.S.C. § 3582(c)(2)).

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1   The alteration in the sentencing guidelines applicable to Gipson's crimes does not

2 warrant modification of his sentence. The relevant sentencing guideline changes here lowered

3 Gipson's sentencing range from 151 to 188 down to 121 to 151. Gipson's sentence continues to

4 be below the guideline range under either the present or 2007 guidelines. The Court is not

5 persuaded that any goals of the amended sentencing guidelines would be served by a further

6 reduction, particularly since Gipson's sentence remains a departure from the guidelines

7 themselves. The Court finds this as another basis on which to DENY the motion.

8   **Conclusion**

9   The Court DENIES Gipson's motion for modification of his sentence. The Ninth Circuit

10 has foreclosed any retroactive application of the Fair Sentencing Act, which Gipson urged as the

11 basis for a modification of his sentence. Gipson is also not entitled to a modification pursuant to

12 § 3582(c)(2) given that his sentence remains below the current guidelines.

13   The clerk is ordered to provide copies of this order to Plaintiff and all counsel.

14   Dated this 7th day of February, 2012.

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18 Marsha J. Pechman
     United States District Judge

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